

## CALIFORNIA FRANCHISE TAX BOARD

Legal Ruling No. 020

June 24, 1958

### FRANCHISE TAX: PRORATION UPON QUALIFYING AS AN INSURANCE COMPANY

#### Syllabus:

A corporation, previously subject to franchise tax, becomes entitled to a proration of the franchise tax upon qualifying as an insurance company.

Taxpayer previously subject to the franchise tax, qualified and commenced operations as an insurance company under the laws of this State on April 1, 1947. When its 1946 franchise tax return was filed taxpayer paid only one-fourth of the tax measured by the income reported on the return. Advice is requested as to whether taxpayer is entitled to prorate the franchise tax upon qualifying as an insurance company.

It is established that the gross premiums tax is, as to insurance companies, a tax on the right to do business and that the franchise tax is within the in lieu provisions of Article XIII, Section 14 4/5, California Constitution (which provides for the tax on insurers). It is clear, therefore, that the franchise tax cannot be imposed on a corporation which is subject to the gross premiums tax, except to the extent that it may be engaged in trust business or related activities. There are no provisions in the law for tax adjustments in the case of a corporation changing its status during a taxable year from an ordinary business corporation to an insurance company. But since the liability for the franchise tax must cease upon such a change by status, a proration of the tax is in order and taxpayer is entitled to an abatement of the tax.